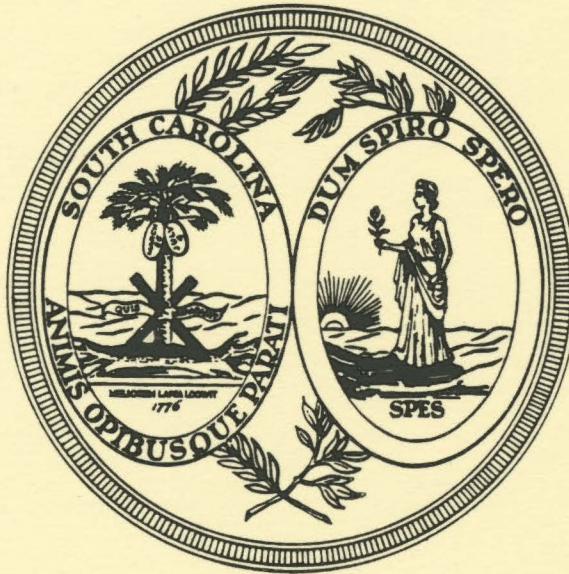


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# South Carolina General Assembly



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## Legislative Audit Council



The State of South Carolina  
General Assembly  
Legislative Audit Council  
A Limited-Scope Review of the  
South Carolina  
Department of Mental Health  
March 15, 1988

**THE STATE OF SOUTH CAROLINA**

**GENERAL ASSEMBLY**

**LEGISLATIVE AUDIT COUNCIL**

**A LIMITED-SCOPE REVIEW OF THE**

**SOUTH CAROLINA**

**DEPARTMENT OF MENTAL HEALTH**

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## **INTRODUCTION AND SUMMARY**

In December 1987, the Speaker of the South Carolina House of Representatives requested the Legislative Audit Council to conduct a limited-scope review of the Department of Mental Health (DMH). The Audit Council was asked to examine three contracts executed by the Department, as well as the Commissioner's travel and use of compensatory time (see Appendix A). The issues covered in this report were the only issues examined in detail by the Audit Council.

This report documents that improvements are needed in the planning, procurement, and monitoring of contracts. It shows that the Commissioner has spent an average of one day per week at seminars and on leave. In addition, the Commissioner has accumulated compensatory time for overtime hours worked, an unusual practice for an agency head.

The Audit Council would like to thank the Department and its staff for the full cooperation they have provided during this review.

**SECTION I**  
**Management Consultant Contract**

In December 1986, the Department of Mental Health entered into a contract with an accounting firm to provide consultant services. The services provided under this contract consist mainly of identifying operational problems in DMH financial and management information systems. Areas being reviewed by the contractor include data processing, accounting, budgeting, patient billing, inventory, and organizational structure. Recommended solutions to the problems found by the contractor center on an upgraded data processing system, including software for new financial systems and hardware necessary to operate such systems.

For work performed from December 1986 through November 1987, the contractor billed DMH \$650,232. As of December 18, 1987, DMH had paid the firm \$589,196. These expenditures were paid with Medicaid and Medicare funds.

The Audit Council reviewed the contract from its planning stages through December 1987, at which time the contract was extended through February 1988. As of December 1987, a series of preliminary reports and a draft of a final report had been completed by the contractor. Below are descriptions of key issues and problems regarding the contract.

**Planning**

In September 1986, the Materials Management Office of the Division of General Services, acting for DMH, issued a request for proposals (RFP) to provide consulting services. However, at that time DMH had no planning document indicating the reasons the Department needed a consultant, on what specific project the consultant would work, or the estimated total cost.

In addition, the RFP did not describe a specific project but listed a wide range of services the contractor would potentially

provide. The services, which were to be provided on an "as-needed" basis, included:

- Audits, examinations, assessments, studies, and reviews of accounting and financial systems.
- Studies, analyses, and presentations to support the Commissioner in relationships with other branches of state government.
- Consultation, assistance, and evaluations in the administration, business, and financial management of the Department.

A planning document for this contract was developed in November and December 1986, after the winning firm had been selected by a DMH evaluation committee.

#### **State Auditor Approval**

Section 11-35-1250 of the South Carolina Procurement Code requires that the approval of the State Auditor be obtained before a contract for accounting or auditing services can be awarded. The State Auditor has interpreted the contract as requiring his approval. This approval was not sought by the Materials Management Office before the contract was signed in 1986. In November 1987, however, the State Auditor approved the contract retroactively.

#### **Contract Award**

Proposals to perform this consultant contract were received from six firms in September 1986. The proposals were reviewed by an evaluation committee of three DMH employees, chaired by a nonvoting representative of the Materials Management Office. Each voting committee member graded each proposal on three factors. The factors and their predetermined weights of importance were:

- 1) Qualifications of the firm and its staff--35%
- 2) Quality of the proposal--35%
- 3) Cost--30%

Although the firm selected by the committee had a significantly higher cost per hour than the second place firm, cost comprised only 30% of the award criteria. Fees charged to DMH by the winning firm ranged from \$42-\$195 per staff hour from December 1986 through August 1987. In September 1987, fees were increased approximately 10%. During the first 12 months of the contract, fees charged to DMH by the winning firm averaged \$121 per hour. The second place firm had proposed fees which would not exceed \$75 per hour. The selection of the winning firm was in accordance with the award criteria approved by the Materials Management Office of General Services.

### **Budgets**

DMH divided the contract into 13 separate projects, 11 of which had their own budget for fees, and 2 of which had no budget. However, the contractor was not required to stay within established budgets. Through November 1987, the accounting firm had exceeded the \$419,465 combined budget for all projects by \$101,039, including \$29,160 for the 2 projects with no budgets.

DMH has paid all cost overruns. Officials stated that the budgets were intended to be estimates of anticipated work, rather than constraints on expenditures by the contractor. However, by not using budgets as expenditure constraints and not requiring prior approval for overruns, DMH has made it more difficult to control costs.

### **Travel and Office Expenses**

The contract requires DMH to pay travel and office (typing, printing, computer usage, telephone, etc.) expenses of the contractor but sets no limits on these expenses. In addition, these expenses have not been formally budgeted or estimated by DMH. Travel and office expenses billed to DMH by the contractor totaled \$129,728 through November 1987. Average expenses per staff member per day were approximately \$241, including \$131 for travel and \$110 for office expenses.

DMH has paid the contractor's travel and office expenses without requiring prior documentation. DMH is now auditing the contractor's records. In an unrelated 1987 contract with another firm, DMH placed limits on travel reimbursements and required prior approval and supporting documentation.

### **Contract Extension**

The contract was awarded December 1, 1986 and expired June 30, 1987. The contract permitted the Materials Management Office to extend the contract for a period not to exceed one year. However, in an apparent oversight of two extension notices from the Materials Management Office, DMH did not begin proceedings to extend the contract until November 1987. A contract extension from July 1, 1987 through December 21, 1987 was retroactively ratified by the Division of General Services on December 21, 1987. On that date, the Materials Management Office further extended the contract from December 22, 1987 through February 28, 1988.

Effective management of a contract would require that an extension be executed before additional work is performed. However, from July 1, 1987 through December 21, 1987, the contractor continued to work and was paid by DMH without a written contract. DMH was billed \$213,272 for work performed from July through November 1987. As of December 18, 1987, DMH had paid \$152,236 of the amount.

### **Conclusion**

Procedural errors have been made in project planning and the monitoring of costs for the consultant services contract. Through November 1987, combined unbudgeted expenditures and expenditures without a contract were \$303,713, 46.7% of total expenditures.

The Audit Council concurs that improvements are needed in DMH's financial information systems. DMH officials state that the contractor has essentially completed all review and analysis



and is now finalizing a report which contains recommendations for improvements in financial and related systems.

**SECTION II**  
**Contract for Revenue Recovery**

In 1983, DMH investigated the possibility of hiring an accounting firm to examine patient financial records to determine if additional Medicaid/Medicare revenues could be recouped. A request for proposals (RFP) was sent to various accounting firms in May 1983, but DMH did not award a contract. The RFP expired in February 1984.

In 1986, the agency again examined the possibility of hiring a company to determine if additional third party payments could be recouped. In April 1986, DMH awarded a sole source contract to a company for "a sophisticated revenue enhancement program plan and execution thereof." The following areas were examined in the award and execution of this contract.

**Sole Source Justification**

DMH's justification to use sole source procurement for a revenue enhancement contract was inadequate. The agency did not adequately justify that the company selected was the only company that could perform the proposed services. The justification stated the company is the, "Only known company with qualifications to carry out a program of this magnitude, proven track record and was the only bidder 2 years ago on a RFP to procure such service." However, a letter dated September 16, 1987 from the State Auditor to the DMH Commissioner stated:

In my opinion, many firms of Certified Public Accountants could have performed this engagement . . . . Further, I do not believe that a sole source award should have been made based on an RFP that was issued almost three years prior to the award.

DMH officials responded that they are in compliance with state procurement laws because an opportunity for all interested companies to respond had been afforded in 1983. At that time, only one company exhibited interest.

### **State Auditor Approval**

The contract to enhance DMH revenue collections has not been approved by the State Auditor's Office as required by law. In a letter to the DMH Commissioner dated September 16, 1987, the State Auditor stated that "approval was not and has not been obtained."

Section 11-35-1250 of the South Carolina Procurement Code states:

No contract for auditing or accounting services shall be awarded without the approval of the State Auditor except where specific statutory authority is otherwise provided.

DMH officials stated that this contract did not need this approval because services were not rendered by accountants or auditors. DMH officials also stated that the contract is for management consultant services. However, the State Auditor reviewed the contract and determined it consists of accounting type work.

### **Contingent Fees**

The revenue enhancement contract allowed the contractor to be paid 25% of the revenues collected for DMH. According to the State Auditor, this type of contingent fee arrangement is in violation of State Board of Accountancy Regulations. State Regulation 1-32(B) states, in part:

Professional services shall not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is attained, or where the fee is otherwise contingent upon the findings or results of such services.

DMH officials indicate that this regulation is not applicable because consulting services instead of accounting services are being provided. DMH also states that the regulation applies to accountants and accountants are not providing the contractual services. Further, the legality of this type regulation has been challenged by the Federal Trade Commission.

### Analysis of Revenue Recovered by Contractor

The contractor has identified approximately \$7.4 million of Medicare and Medicaid funds from prior years that the Department has not claimed. Of the \$7.4 million, \$5.9 million consists of Medicare claims and \$1.5 million consists of Medicaid claims (see Table 1). To date, DMH has received \$3.88 million from Medicaid and Medicare.

**TABLE 1**  
**ANALYSIS OF CLAIMS SUBMITTED FOR PAYMENT**  
**AND CLAIMS PAID AS OF JANUARY 4, 1988**

<u>Facility</u>	<u>Date</u>	<u>Claims Submitted(1)</u>	<u>Claims Paid(2)</u>
<b><u>Medicaid</u></b>			
Crafts-Farrow	FY 80-84	\$1,043,092	\$1,043,092
Byrnes Clinic	FY 85-87	490,000	223,521
Total Medicaid		<u>\$1,533,092</u>	<u>\$1,266,613(3)</u>
<b><u>Medicare</u></b>			
Byrnes Clinic	FY 85-87	\$2,701,000	\$2,256,967
Physician Services	FY 85-87	\$3,200,000	365,447
Total Medicare		<u>\$5,900,000</u>	<u>\$2,622,414</u>
<b>TOTAL</b>		<u><b>\$7,434,092</b></u>	<u><b>\$3,889,027</b></u>

- 
- (1) Excludes state matching funds, co-pays, and deductibles.  
(2) Total received as of January 4, 1988. Remainder of claims has not been processed by fiscal intermediaries.  
(3) \$1,043,092 has been disallowed by the federal government, but HHSFC has appealed. HHSFC stated that the remainder has been approved by federal officials.

Source: Department of Mental Health financial records.

### **Medicaid Recoupments**

In March 1987, DMH submitted Medicaid claims totalling \$1,043,092 to the State Health and Human Services Finance Commission (HHSFC) for services provided Crafts-Farrow State Hospital clients from FY 79-80 through FY 83-84. HHSFC paid the claims, but the federal government later disallowed them and requested repayment. The claims were disallowed because they were not submitted timely and Medicare was not billed before Medicaid. HHSFC has appealed the disallowance, but the appeal has not yet been resolved.

In October 1987, HHSFC requested a ruling from the federal government on the propriety of the remainder (\$490,000) of the Medicaid claims. The federal government ruled that in five areas, Medicaid reimbursement is allowable. In one area, the federal government did not make a ruling.

### **Medicare Recoupments**

According to Medicare officials, before the project began, a meeting was held with the contractor to discuss what could be billed to Medicare. Regulations concerning questions about billable services were reviewed and discussed prior to the actual work by the contractor. According to a Medicare administrator, revenue cost recovery work by outside contractors is not unusual.

Approximately \$5.9 million in claims was submitted to Medicare for payment. As of January 4, 1988, approximately \$2.6 million had been paid. According to Medicare officials, a backlog of claims has slowed the processing of DMH claims. However, all claims should be paid by March 1988. After the claims are paid, there will be some post payment review to determine if any overpayments were made and if costs were properly claimed.

Based on interviews with Medicare and Medicaid officials, there is no indication that a significant portion of claims submitted by the contractor will be disallowed. Therefore, even

if the state's appeal of the approximately \$1 million disallowance for Crafts-Farrow State Hospital is denied, the state stands to gain over \$6 million from this project, less the contractor's fees of approximately \$1.5 million.

### **Conclusion**

According to the State Auditor, DMH did not follow state laws in the execution of the revenue enhancement contract. Also, the contingent fee arrangement violated a state regulation. The regulation, however, is being challenged by the Federal Trade Commission.

Although DMH made mistakes administering the contract, the agency and General Fund could gain substantial additional revenues which would not have been realized without the project. There is no indication that a significant portion of the claims will be denied for payment.

### SECTION III

#### Contract to Assess DMH Alcohol and Drug Addiction Services

In March 1987, the DMH Commissioner's Office entered into a special employment contract with a physician, "To provide a comprehensive review and assessment of all inpatient alcohol and drug treatment services delivered by the South Carolina Department of Mental Health." The contract allowed for total gross compensation of \$15,000, and an additional \$1,200 to pay the state's share of social security, workers' compensation, and unemployment taxes. The contract period was from March 4, 1987 to June 27, 1987.

Special employment contracts require prior approval by the Budget and Control Board's Division of Human Resource Management, which was obtained by DMH. The agency was under no requirement to advertise or recruit for this special contract. However, the following problems were found with the execution of the contract.

#### **Contract Extension**

DMH allowed the contract employee to extend the completion date without specifying when the terms of the contract would be completed. On April 25, 1987, the contract employee requested an extension past the June 27, 1987 deadline to complete the contract agreement. The request stated in part:

My schedule for the past week and my anticipated schedule for the next several weeks will make it very difficult for me to put in as many hours as are reflected in our agreement . . . . I do, however, have every intention of fulfilling our agreement and would like, therefore, to request that you grant me a no cost extension to the agreement such that I will continue to work for the department beyond the current end-date of June 27, 1987 until I have provided the number of hours agreed to.

Agency documents indicate DMH verbally agreed to extend the contract. However, DMH was required by page 3, Section 9 of the contract to approve any amendments in writing:

This contract and Appendices attached hereto constitute the entire agreement between the parties and no prior representations or negotiations or agreements by either party shall affect the construction and operation hereof. This contract may be amended only in writing signed by both parties.

It is a bad management practice in government to verbally extend contracts. In addition, by not specifying the amount of time DMH was allowing for completion of the agreement, the agency cannot properly monitor its contract. Further, the agency cannot ensure that it obtains the final product within a specified time period.

#### **Payments**

When DMH determined that work required by the contract employee would not be completed on time, the agency did not withhold any payments. DMH paid the employee the final payment of \$1,875 on July 31, 1987, although the work contracted for had not been completed. (The employee actually received one extra paycheck, as discussed below.)

Page 3, Section C of the employee contract would have allowed for the agency to terminate the contract or withhold funds until completion. This section states:

Agency may terminate this contract at any time for failure of Special Contract Employee to perform, or for any other good and sufficient cause. In such event Special Contract Employee shall be entitled to no compensation beyond date of termination, other than for such part of the contract as has been performed, nor to reimbursement for expenses not incurred prior to date of termination.

Page 2, Section 4 of the contract states, in part:

Said gross compensation will be paid in installments of approximately equal payments over the life of the contract . . . .

By not holding back a certain portion of funds, the agency has less assurance that it will get what it bargains for.



Withholding funds until completion of a project is a good business practice.

### **Overpayments**

The special contract employee was overpaid on two separate occasions. Overpayments of \$157.52 and \$1,875.00 were made on June 2, 1987 and August 1, 1987. The overpayment of \$1,875.00 was recouped by DMH on August 18, 1987 while \$157.52 has not yet been recouped.

The overpayment of \$157.52 was made because DMH officials responsible for monitoring the contract employee's hours provided incorrect information to the DMH payroll department. The \$1,875.00 overpayment was made because the contract employee was not terminated from the payroll when the contract expired. The facility detected the overpayment when it was made and notified the Deputy Commissioner of Financial Services, who initiated recoupment.

### **State Retirement Benefits Paid**

DMH paid the agency's share of the contract employee's retirement and death benefits, although the contract did not allow for these benefits and the employee opted not to participate. The contract specifically allowed for \$15,000 compensation (before taxes) and \$1,200 for the state's share of social security, workers' compensation and unemployment compensation taxes, for a total contract budget of \$16,200.

After the contract was negotiated, the Comptroller General's Office notified DMH that the employee must participate in the Retirement System. DMH paid for these additional fringe benefits, costing the agency more than \$1,100. As a result, the agency paid a total of \$17,425 in wages and benefits instead of the \$16,200 budgeted in the contract.

According to DMH officials, they were unaware of state law mandating participation in the State Retirement System for former

state employees who have retirement contributions on deposit at the State Retirement System.

#### **Contract Employee's Report**

In August 1987, the contract employee issued a draft report to DMH entitled Assessment and Analysis of the Alcohol and Drug Programs for Inpatients. A second, revised draft was submitted in October 1987 and a revised, final report was issued in December 1987. The Audit Council obtained, reviewed, and analyzed the three reports. Due to editing, the final report of 18.25 pages was approximately 3 pages shorter than the first draft. No documentation was available to determine the reasons for the changes and deletions to the final report. However, a letter from the contract employee transmitting the October draft to DMH stated:

I have done a moderate amount of editing to take out most reference to the Department's role and virtually all of the personal references to everyone except [\_\_] . . . . Pencil any suggestions you may have in the margins, edit as you please, and have [\_\_] send it back.

In a letter to the agency Commissioner dated October 26, 1987, the contract employee stated:

Ten days ago I submitted to [Executive Deputy Commissioner] a somewhat revised version of my report which I removed most personal references from, as well as, those comments or statements which were likely to be construed as critical of the department.

The following are examples of portions of the original report which were deleted from the final report.

- Orders and directives came to the village from a variety of sources and were often ill-thought-out, their implications inadequately examined, and at times were in conflict with directives coming from other sources. Frequently such orders would be reversed the following day or week.
- [\_\_'s] early management style in his new role was at times unpredictable and frequently tended to be rather "shoot from the hip" in style.

- Budget information was kept under wraps and never clearly shared with program management. Resources necessary to make the changes and additions required to respond to the demands of the new program were not made available or requests for their use remained unanswered for long periods of time.
- At times, Mr. [ ] would be treated as if he were the manager for the Department for all alcohol and drug treatment issues, and at times he would be treated as if he were just a pawn in a management exercise which was being orchestrated from the Commissioner's Office.
- Some of the problems were imposed by the involuntary program changes, some related to management at Morris Village, some related to the management at the Departmental level and some were related to communication problems between the two.

### **Conclusion**

The report written by the contractor was edited to remove statements critical of management. In addition, payments to the contractor were managed in a disorganized manner, and DMH did not enforce certain terms of the contract. Nonetheless, the agency should use the report to improve the delivery of inpatient alcohol and drug addiction services.

#### SECTION IV

#### Commissioner's Travel, Use of Compensatory Time and Leave

An analysis of the DMH Commissioner's travel and leave records indicated the following.

##### **Time Spent Out of the Office**

From January 1, 1986 to November 30, 1987, the Commissioner spent approximately 19% (90.2 days) of his time attending seminars or on leave. During this time period, 477 state workdays were available.

The Audit Council examined the Commissioner's time spent attending and speaking at seminars. In addition, military, annual, and other leave were examined. The Commissioner's travel within the state on DMH business was not included in the total days spent out of the office, but was included in the total workdays available.

In 1986, the Commissioner was out of the office a total of 43.7 days. From January 1, 1987 through November 30, 1987, he spent 46.5 days out of the office. Table 2 analyzes the Commissioner's time spent out of the office.

**TABLE 2**  
**COMMISSIONER'S USE OF LEAVE**  
**JANUARY 1, 1986 THROUGH NOVEMBER 30, 1987**

<u>Leave</u>	<u>1986 Days</u>	<u>1987 Days</u>	<u>Total</u>
Attending Seminars(1)	22.1	21.7	43.8
Speaking at Seminars(2)	8.5	14.5	23.0
Military	10.0	0.0	10.0
Personal(3)	<u>3.1</u>	<u>10.3</u>	<u>13.4</u>
<b>TOTAL</b>	<b><u>43.7</u></b>	<b><u>46.5</u></b>	<b><u>90.2</u></b>

- (1) Official leave was used for these days.
- (2) The Commissioner received honorariums for all of these engagements. Compensatory time was used for all of these days.
- (3) This includes 3.1 days of compensatory time and 10.3 days of annual leave.

Source: Department of Mental Health records.

#### **Accumulation and Use of Compensatory Time**

The Commissioner accrues compensatory time (comp time) for all time he works beyond 40 hours per week. For each hour beyond 40 worked in a week, he credits himself with an hour of leave to be taken at a later date.

From January 1, 1986 through June 30, 1987, 23.5 days of accumulated comp time were not used by the Commissioner. These days were deleted because a new system was implemented to record the Commissioner's comp time. Between July 1, 1987 and November 30, 1987, the Commissioner had used 5 hours of comp time and had a remaining balance of 17.5 days.

State laws and regulations do not specifically allow or disallow agency directors to accumulate comp time. In a letter to the Budget and Control Board's Division of Human Resource Management (HRM), the Audit Council asked:

1. Do other large state agencies allow executive directors to accumulate compensatory time?

2. Is it the intent of the Budget and Control Board to allow agency directors to accumulate and use compensatory time?

In response to the first question, HRM stated:

We have reviewed and discussed with larger agencies their compensatory time policies and, with one exception, are informed that their executive directors do not earn nor take compensatory time for overtime hours worked. The exception was the Department of Mental Health.

To the second question, HRM responded:

The purpose of allowing compensatory time is to promote equity between the FLSA [Fair Labor Standards Act] exempt employees and non-exempt employees who are required to be compensated for overtime work. In some circumstances, duties may be similar for certain aspects of the job between these groups of employees. Another consideration is to reward exempt employees when they are required to work unusually long hours in accomplishing special projects in a limited period of time.

#### **Comp Time Forms Not Completed and Approved**

There is no evidence that the DMH Commission has approved the accrual and use of comp time by the Commissioner. In addition, the Commissioner does not follow DMH policy when documenting overtime work. The Commissioner informs his administrative assistants of any overtime worked, and they maintain overtime records. These records do not contain justification for the need to work overtime. Therefore, the Audit Council could not determine the necessity of the compensatory time claimed by the Commissioner.

The Department's comp time policy states:

Exempt employees may be granted compensatory time on an hour for hour basis for all hours in excess of 40 hours per week. All such compensatory time must be used within 90 days of the date it was earned. SCDMH form P-162, "Request for Overtime/Compensatory Time" should be used as approval for and documentation of all compensatory time.

DMH policy does not require that the Commissioner receive compensatory time credit for overtime worked. This policy

grants supervisors the discretion of allowing or disallowing professional employees credit for overtime.

#### **Personal Travel at State Expense**

The Commissioner has filed travel vouchers for personal travel expenses. As a result, on two occasions his personal travel was paid for by the state. In both instances, these travel costs were repaid to the state.

On March 7, 1986, the Commissioner traveled to Washington to speak at a seminar in which he received an honorarium. The Department paid for the trip. He reimbursed the Department \$251 for the trip on April 11, 1986.

In May 1987, the Commissioner attended a seminar in Los Angeles. Instead of flying back to Columbia, he flew to Newark, New Jersey for personal business. An internal audit in August 1987 determined that the Commissioner owed the state \$212 for the personal portion of the trip. He repaid \$212 on September 15, 1987. No other instances of erroneous travel payments were found.

#### **Conclusion**

The accumulation and use of compensatory time by the Commissioner has not been monitored. The DMH Commission is responsible for determining the appropriateness of the amount of time the Commissioner spends out of the office.

## RECOMMENDATIONS

- (1) DMH SHOULD DEVELOP A FORMAL PLANNING DOCUMENT, INCLUDING A DETAILED PROJECT DESCRIPTION AND COST ESTIMATE, PRIOR TO PROCURING CONSULTANT SERVICES.
- (2) DMH SHOULD IMPROVE ITS MONITORING OF CONTRACT EXPENDITURES. THIS SHOULD INCLUDE PRIOR APPROVAL OF COST OVERRUNS AND FORMAL BUDGETING AND DOCUMENTATION OF TRAVEL EXPENSES.
- (3) DMH SHOULD ENSURE THAT CONTRACTS ARE PROPERLY EXTENDED BEFORE WORK IS PERMITTED TO CONTINUE. DMH SHOULD SPECIFY, IN WRITING, THE DATE A CONTRACT IS TO BE COMPLETED WHEN AN EXTENSION IS GRANTED.
- (4) DMH SHOULD JUSTIFY ALL SOLE SOURCE CONTRACTS. WHEN IN DOUBT, THE AGENCY SHOULD SEEK COMPETITION. DMH SHOULD OBTAIN PRIOR APPROVAL FROM THE STATE AUDITOR BEFORE ENTERING INTO ACCOUNTING OR AUDITING CONTRACTS.
- (5) DMH SHOULD CONTINUE TO WORK WITH THE STATE HEALTH AND HUMAN SERVICES FINANCE COMMISSION IN THE APPEAL OF FUNDS DISALLOWED AT CRAFTS-FARROW HOSPITAL.
- (6) DMH SHOULD WITHHOLD A CERTAIN AMOUNT OF FUNDS FROM CONTRACTORS UNTIL ALL TERMS OF A CONTRACT ARE MET.
- (7) DMH SHOULD EXAMINE ITS PROCEDURES FOR PAYING CONTRACTORS. SAFEGUARDS SHOULD BE ENACTED TO PREVENT CONTRACTORS FROM RECEIVING PAYMENTS NOT DUE. ALL FRINGE BENEFITS TO BE PROVIDED A CONTRACT EMPLOYEE SHOULD BE SPECIFIED IN THE CONTRACT. DMH SHOULD RECOUP ALL OVERPAYMENTS MADE TO SPECIAL CONTRACT EMPLOYEES.



- (8) THE COMMISSION SHOULD FORMALLY STATE ITS COMPENSATORY TIME POLICY AS IT PERTAINS TO THE COMMISSIONER. IF THE ACCUMULATION OF COMPENSATORY TIME IS PERMITTED, GUIDELINES TO MONITOR THIS TIME SHOULD BE DEVELOPED.

## **APPENDICES**

APPENDIX A

The House of Representatives

STATE OF SOUTH CAROLINA

STATE HOUSE

P. O. BOX 11867

Columbia 29211



ROBERT J. SHEHEEN  
SPEAKER OF THE HOUSE

HOME ADDRESS  
1111 CHURCH STREET  
CAMDEN, S. C.  
29020

December 10, 1987

Mr. Robert S. Small, Jr.  
Legislative Audit Council  
State of South Carolina  
620 NCNB Tower  
Columbia, South Carolina 29201

Dear Mr. Chairman:

Following the recent concerns expressed by some members of the General Assembly about the operation of the S. C. Department of Mental Health, I have reviewed a significant amount of information concerning activities in that Department.

We do not have the ability with staff here to adequately investigate certain allegations and I would request that you assign the necessary personnel from the Audit Council staff to review and render a report regarding certain activities which I am listing in this correspondence. I have tried to narrow the scope of the inquiry in order to facilitate and expedite your review.

ISSUES TO BE ADDRESSED

1. The award to Touche-Ross for the medicaid contract on revenue recovery;
2. The Touche-Ross consulting contract for financial information management;
3. The contract and payments thereunder and the reports issued by Robert Jackson, M. D.;
4. Travel payments and use of compensatory time by the Agency Commissioner.

I have in hand certain memoranda and working papers regarding these matters and would welcome the opportunity to consult with the staff people assigned to the project.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert J. Sheheen", written over a horizontal line.

Robert J. Sheheen

RJS:swc

# **SOUTH CAROLINA MENTAL HEALTH COMMISSION**

P.O. Box 485, Columbia, South Carolina 29202

February 26, 1988

Mr. George Schroeder  
Director  
Legislative Audit Council  
620 NCNB Tower  
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Please accept this response on behalf of the South Carolina Department of Mental Health (DMH) to the report of the Legislative Audit Council's (LAC) limited-scope review of DMH. To assure easy reference between the report and response we have followed the sections and headings contained in the report.

In brief summary I would like to point out that with the assistance of a blue ribbon committee and a national search firm, the Commission sought and employed a nationally recognized professional in the area of mental health to fill the vacancy in the office of the State Commissioner of Mental Health. Not only does Dr. Bevilacqua's participation in national panels and programs on mental health bring prestige to South Carolina, it places DMH in a better posture to apply for and receive grants with which to conduct innovative programs in South Carolina. If there are inconsistencies in the compensatory time policy of DMH which was in place long before Dr. Bevilacqua was employed, then the Commission will certainly see that the necessary changes are made.

At the time Dr. Bevilacqua was employed as State Commissioner the Commission directed that steps be taken to improve the DMH systems of internal accounting controls and to achieve an unqualified audit which DMH had not received since 1974. Expert assistance from outside the Department was necessary to accomplish this. These experts are expensive but vitally important to put in place proper financial systems from which to operate this agency. Expenditures for this consulting work have been closely audited and the Commission is pleased with the results.

In regard to the Touche Ross revenue recovery contract and the contract to help implement the Act for Commitment for Chemically Dependent Persons, DMH now has in place a Director of Contractual Services which

will better monitor Department contracts to assure compliance with all procurement requirements.

The Commission is particularly proud of the department's initiative, approved by the General Assembly, to seek medicare and medicaid funds to which DMH was entitled but which had not been billed in previous years. This effort enabled DMH to identify \$9 million in such revenue which would have been lost without the efforts of Touche Ross. This was accomplished on the basis of a reasonable contingency fee without any commitment of funds on the part of DMH.

A consulting contract providing for a fee of \$15,000.00 was entered into to help implement the new program established by the General Assembly for commitment of chemically dependent persons. This program represented a major policy shift by DMH in services to the chemically dependent from voluntary to involuntary. Such shift in services with the accompanying application for appropriated funds required expertise in implementation which was provided through this contract.

South Carolina Department of Mental Health comments relating to the report of the Legislative Audit Council's limited-scope review of DMH are summarized below.

### INTRODUCTION AND SUMMARY

The Department of Mental Health has initiated actions which have resulted in the retrieving of lost Medicaid and Medicare revenues totaling \$9.5 million. It has properly sought assistance to improve its financial management capacity, which has not received an unqualified audit since 1974. It sought consultant assistance in the implementation of the 1986 Act for the Commitment of Chemically Dependent Persons.

The Commissioner's use of compensatory time has been in place for many years in the Department of Mental Health. The use of compensatory time varies across state agencies but is used, in one way or another, by most large and small agencies. The Commissioner's use of leave has been fully supported by the Commission. The majority of the leave to attend or speak at seminars has been spent representing the interests of the Department of Mental Health at meetings of governmental and private organizations in the mental health field.

### SECTION I

#### Management Consultant Contract

DMH has not received an unqualified audit report since 1974. When Dr. Bevilacqua began his tenure as Commissioner, the Commission set as one of three primary goals the achievement of an unqualified audit at the

earliest possible date. The Commission learned from review of audit reports that:

- 1) systems of internal accounting controls were inadequate to provide appropriate controls over proper recording of the Department's balances and transactions; and
- 2) the Auditors were unable to complete adequate auditing procedures to enable them to express an opinion on the financial statements.

The Commission then charged the Department's administration to move to rectify this situation as quickly as possible by updating financial systems. To achieve this goal, external expertise was needed and the consulting contract was implemented in order to:

- 1) identify operational problems as well as opportunities for improvement in financial systems;
- 2) define the functional requirements of information systems to rectify these problems; and
- 3) develop a plan for implementing new and more efficient financial systems.

### Planning

The LAC report implies that it was improper for DMH to issue a Request For Proposal (RFP) without a planning document which indicated the reasons the Department needed the consultant, on what specific project the consultant would work, or the estimated total cost.

The RFP issued stated that the new State Commissioner believed it was an appropriate time to have an outside consultant look at accounting, business and the financial organization to include systems, staffing, and reporting procedures. This was requested in order to correct problems reflected in several years' audits and to determine the systems needed to ensure that the financial management function would be fully prepared to provide support to programs in the 21st century.

This RFP was discussed with and issued by the Materials Management Division of General Services of the Budget and Control Board. Because the Department needed consultant assistance to identify the appropriate areas for review of financial controls and procedures, the RFP was issued on an "as needed" basis without referencing specific projects or hours associated therewith.

It is important to note that planning documents, which included the identification of specific projects to be performed and the estimated cost of each, were prepared prior to proceeding with any of the studies conducted under the contract.

### Contract Award

The Request for Proposal specified factors to be used in the evaluation of proposals.

- (1) Qualifications required - prior work and consulting experience of persons assigned to the engagement to be knowledgeable of South Carolina government structure, accounting, budgeting, and appropriations systems, financial policies and procedures, audit requirements, and procedures to include the ability to commit capable personnel.
- (2) Quality of the proposal and its probable effectiveness in the accomplishment of overall project objectives based upon a demonstrated understanding of the needs to be addressed, soundness of approach of meeting the needs of the Department, and ability to give prompt responses.
- (3) Cost - based on a schedule of fees and costs for professionals, administrative and clerical, and other reimbursables and overhead/indirect cost rates.

The Selection Committee (which included a representative of Materials Management as a non-voting member) determined that the firm selected had an exemplary track record with the Department. The company demonstrated its understanding of this department's needs and its soundness of approach in meeting those needs. A lengthy orientation period would not be required in order for the firm to offer consultation of high quality.

### Budgets

The LAC report stated that two (2) projects had no budgets. Budget amounts were not assigned to these projects as many individual special tasks were performed under these project headings. These project categories were used solely to accumulate expenditures for eight to ten (8-10) specially requested analyses each of which required a small number of hours of professional time to complete. Because the time spent on these specially requested analyses was not significant, preparation of a detailed budget/work plan was not warranted.

The LAC report asserts that cost overruns of estimated budgets were improper. The LAC Report failed to recognize that because the engagement was to review all financial systems in detail, the exact amount of time required to review each system could not be determined prior to commencing the review. The Deputy Commissioner of Financial Services was constantly involved in the systems review processes and was kept informed of problems encountered in the review process. The complexity of the areas being reviewed was such that underestimation of time to properly and thoroughly review each area was inevitable. DMH considers its involvement in the reviews to be sufficiently adequate control over the professional time spent in the review process of each area. Since the original budgeted amounts were merely estimates and Department officials were kept abreast of additional time required to

properly review areas selected, any hours worked in excess of original estimates were appropriate and justified.

#### Travel and Office Expenses

The LAC report alleges that DMH acted improperly by not setting limits on expenses of the contractor.

The RFP required each proposal to contain a schedule of fees and costs for professionals, administrative and clerical staff, methods of determining reimbursables, overhead/indirect cost rates, and any other multipliers or costs to be charged. The contractor responded appropriately to the RFP requirement by providing schedules of fees and expenses to be charged to DMH.

The issuance of the RFP and the acceptance of the proposal of the consultant was supervised by the Materials Management Office of the Division of General Services. DMH was not advised by the Materials Management Office that it was necessary to limit expenses, but was rather advised that the method of fees and expenses quoted in the proposal was acceptable. Costs and expenses under this contract are subject to audit and, therefore, adjustment if any of the costs are found to be inappropriately charged to the Department.

DMH has exercised due care in accounting for travel and office expenses. Due to the magnitude and complexity of the engagement it would have been unreasonably burdensome to require detailed documentation and copies of expenditure vouchers to be submitted with each reimbursement request. The South Carolina Consolidated Procurement Code has provisions which allow for auditing of costs and expenses for contracts. DMH has utilized these provisions to audit costs of this contract and has complied with any requirement to substantiate expenditures for travel and office expenses.

#### Contract Extension

The contract contained a provision which permitted the extension of the contract for a period of up to one additional year. In November 1987, when DMH officials realized that the term of the contract had not been extended by the Materials Management Office, they extended it pursuant to provisions of the South Carolina Consolidated Procurement Code, which permits ratification of contract extensions.

#### Conclusion

DMH takes exception to the LAC conclusion that errors were made in project planning and monitoring of the costs under the contract. It was appropriate for DMH to utilize the consultants to assist in proper planning of the areas to be reviewed. The establishment of individual projects under the engagement was appropriate. Costs and expenses paid under the contract were in accordance with the contract terms.



## SECTION II

### Contract for Revenue Recovery

In 1983 DMH issued a request for proposals "to furnish reimbursement consulting service." DMH was not investigating the possibility of hiring an accounting firm as stated in the LAC report.

#### Sole Source Justification

While the 1983 RFP was submitted to eight (8) consultants, DMH records indicate that only one (1) response to this RFP was received. In 1986 the Department did not seek to reissue the RFP for these consulting efforts due to the poor response to the earlier proposal efforts. The firm of Touche Ross was the only firm that had exhibited interest in performing this service for DMH. Touche Ross, as of this date, has performed this revenue maximization service for twenty-two (22) states, collecting over \$200 million in retroactive revenue for these states.

DMH considers the use of the sole source determination appropriate. The Department has complied with the bidding requirements of the procurement code by the sole source determination. The procurement process has provisions for filing a protest against a procurement decision and no protest was filed against the award of this contract.

#### State Auditor Approval

The RFP issued by DMH was "to furnish reimbursement consulting service." The Materials Management Office of the Budget and Control Board may certify a state agency to make direct agency procurements in four (4) areas. These areas include consultant services, which are defined (regulation 19-445.2025) as "an individual, partnership, corporation, or any other legally established organization performing consulting services for or providing consulting advice to the State of South Carolina or any governmental body thereof, over whom the State or governmental body has the right of control as to the result to be accomplished but not as to the details and means by which the result is to be accomplished." This definition includes "performing consulting services" as well as "providing consulting advice."

The Touche Ross contract is one for "consulting services" and is not one for accounting or auditing services. The contract specifically gives DMH the right of control as to the result to be accomplished by these consultants, a right which would not exist in a contract for auditing services. The "Management Consulting Division" of Touche Ross was the implementing body for the contract. Its employees in this area of specialization are health care professionals, physicians, and former government staff, not auditors. As is typical of consulting contracts, DMH staff is now trained and systems are now in place, designed by the consultant, to continue the revenue recovery project. Furthermore, even if the contract were one for auditing or accounting services, a provision of the 1987-88 Appropriations Act provides "specific statutory authority" to remove the contract from the requirement for State Auditor's approval.

This contract for consulting services does not require the approval of the State Auditor; however, in an attempt to expedite payment of the contractor for the contract services rendered, the Department has requested and obtained the State Auditor's approval.

### Contingent Fees

The regulation pertaining to contingency fees quoted in this section of the Legislative Audit Council report does not apply to this contract. The regulation of the Board of Accountancy applies to services rendered by persons licensed by the board to practice accountancy in South Carolina. The regulation is not applicable to persons implementing the consulting contract because those individuals are not practicing accountancy in South Carolina and have not sought a license from the Board.

Furthermore, the contingency fee arrangements in the contract parallel those which have been accepted by federal authorities and adopted in contracts with many other states which have similar ethical rules governing the accounting profession. This fact is demonstrated by the consultant's contracts for revenue recovery projects in over twenty other states in which the contingency fee basis of remunerations was used. Moreover, in the framework of ethics, the manner in which the consultants render consulting services in the revenue maximization efforts could not and would not be affected by the fact that the fee is contingent upon the funds to be obtained by DMH.

Finally, the South Carolina General Assembly in the 1987-88 Appropriations Act authorized DMH to pay the costs and fees incurred in identifying and collecting additional medicare revenue from the funds actually collected from those efforts.

### Medicaid Recoupments

This section indicates that the federal government disallowed the claims relating to years 1980 to 1984 because they were not submitted in a timely manner and medicare was not billed before medicaid. DMH and the South Carolina Health and Human Services Finance Commission believe that claims were submitted within the appropriate time frames as permitted by the regulations and were billed appropriately under the medicaid regulations. The Finance Commission and DMH are presenting this position in their appeal of the disallowance.

### Conclusion

DMH followed State laws in executing the revenue enhancement contract. The contract has enabled the Department to identify medicare and medicaid funds for the state in excess of \$9 million dollars which would not have been obtained without the efforts of Touche Ross. The contract did not require any commitment of funds on the part of DMH or the State unless there was recovery of revenues to the State. Systems and procedures which were developed during this recovery effort should

benefit the state by annual recurring benefits in excess of \$1.5 million per year.

### SECTION III

#### Contract to Assist DMH Alcohol and Drug Addiction Services

The Audit Council's Report implies that the employment contract required the employee to provide a written report, that the report was not provided until after the last contract payment was made, and that, therefore, the Department paid the employee before the employee satisfied his contract responsibilities. In fact, the contract did not require a written report. The contract required the employee to provide a specified number of hours between March 4, 1987, and June 27, 1987, and to provide the Department assessments and recommendations upon reviewing the Department's alcohol and drug treatment services. These assessments and recommendations were to be provided through continuing consultation with the Department's clinical staff in the treatment programs and the Department's administrative staff. The Department sought the consultation to assist in the implementation of the Act for the Commitment of Chemically Dependent Persons which took effect January 1, 1987. The consultation was planned to occur simultaneously with the program changes necessitated by the legislation. During the four (4) months of the contract the employee provided the assessments and recommendations in numerous meetings with the Department's clinical staff and administrative staff, as well as the Department's Commissioner. All the hours of consultative services had been provided to the Department prior to the last contract payment in August 1987.

During the last month of the contract the Department requested the employee to provide a written report of his prior verbal reports. The written report was requested to reflect the employee's recommendations for further program development. The consultant employee presented several drafts for review by the Department. The drafts were edited to remove inappropriate comments on personalities, factually incorrect statements, and comments on issues beyond the scope of the employee's assignment. The LAC Report contains several statements made by the consultant employee in the first draft of his report which were among the several pages of draft material deleted from the final report. These deletions were made because they were irrelevant to the purpose of the report.

Two overpayments were made by the Department to the employee. One overpayment was detected immediately and recouped. The overpayment of \$157.52 was discovered only recently when information was assembled for the Audit Council. The repayment has now been made.

The State Division of Human Resource Management reviewed and approved only the payment of the \$15,000 compensation; the amounts of employer contributions to social security, workers' compensation, unemployment compensation taxes and retirement fund were left to the determination of the agency and the employee. The employee originally opted not to participate in the retirement system. Subsequently, the Comptroller

General's Office notified the Department that the employee was required to participate. (A former state employee who has ceased to be a contributing member of the retirement system and has requested refund of his contributions must participate in the system if the requested refund has not been received at the time the former employee enters into a special contractual services agreement with the state.) The employee then made his contributions to the retirement system and the Department made the employer's contributions. The retirement system payments did not require approval of the State Division of Human Resource Management, and the Department did not revise the contract.

The implementation of the Act for the Commitment of Chemically Dependent Persons was an extremely challenging effort for all agencies involved. The Department has been recognized by the Probate Judges Association, the South Carolina Commission on Alcohol and Drug Abuse and other agencies affected by the act for the Department's responsiveness in establishing a treatment capacity meeting the intent of the Act. The LAC Report does not fairly represent the Department's efforts.

#### SECTION IV

##### Commissioner's Travel, Use of Compensatory Time and Leave

DMH has contacted the executive directors of other agencies and has been advised by the executive directors that they take compensatory time. The Commissioner of the Department of Mental Health's use of compensatory time is not exceptional.

The Budget and Control Board's Division of Human Resource Management has written the Department a letter in response to the Department's request, clarifying the Division's regulations referenced in the Audit Council's Report. The Division states that the Commissioner is an exempt employee under the Fair Labor Standards Act. Furthermore, the Division does not have any regulation "that would preclude an agency director from being eligible to earn compensatory time." As an exempt employee, the Commissioner is eligible to accrue compensatory time under the Department's policy and procedure and the Budget and Control Board's regulations.

In August 1987 the Commissioner provided detailed information to the Mental Health Commission on the Commissioner's travel and use of leave during 1986 and 1987. The Commission views Dr. Bevilacqua's travel and use of leave time as appropriate.

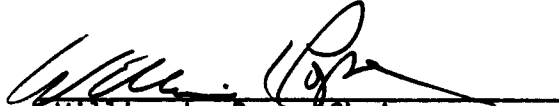
The Blue Ribbon panel appointed to search in 1984 and 1985 for a State Commissioner upon the previous Commissioner's retirement selected Dr. Bevilacqua partially because of his prominence and involvement in the mental health field at the national level. The Commission believes that Dr. Bevilacqua's leadership role in national mental health organizations benefits the South Carolina Department of Mental Health.

## RECOMMENDATIONS

The following are the Department's responses to the Recommendations which conclude the LAC Report.

- (1) DMH routinely develops formal planning documents, including detailed project description and cost estimates prior to procuring consultant services. In the case of the consulting contract referred to in this document it was not practical to do so. However, a planning document for this contract was developed with the assistance of the consultants prior to incurring any obligation for expenditure of funds under the contract.
- (2) DMH believes that it has adequately monitored expenditures of costs and expenses incurred under this contract. DMH officials were constantly involved in the consultant's review efforts and monitored professional hours incurred. DMH has also complied with any requirements for documentation of travel expenses by auditing all costs which are subject to audit and verification as provided by the South Carolina Consolidated Procurement Code.
- (3) DMH agrees that all contracts should be properly extended before work is permitted to continue.
- (4) DMH agrees that all sole source contracts should contain appropriate justification and that prior approval from the State Auditor should be obtained before entering into accounting and auditing contracts. The referenced contract in the recommendation did not require the approval of the State Auditor because the contract was for consulting services and not for accounting and auditing services.
- (5) DMH initiated the revenue recovery effort and is continuing to work with the State Health and Human Services Finance Commission in all matters relating to Medicaid revenue recovery efforts.
- (6) DMH agrees a portion of contract funds should be withheld until the contract services have been provided. In this particular contract all the hours of service had been provided when final payment was made.
- (7) DMH agrees that it should consider implementing safeguards in the case of special employment contracts. Safeguards exist for other contractual obligations of the Department. DMH agrees that all fringe benefits to be provided to a contract employee should be specified in the contract. All overpayments to the special contract employee have been recouped.
- (8) Because of the inconsistent procedures for use of compensatory time in state agencies, the Mental Health Commission will review the Department's procedures.

I would like to thank the LAC staff for the courteous and professional manner in which this audit was conducted. If you need further input from the Department we will be pleased to accommodate you.



William L. Pope, Chairman  
Mental Health Commission

WLP:jk